STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

River Park Apartments LLC, Petitioner-Appellant, v. **Pottawattamie County Board of Review,** Respondent-Appellee.	**ORDER** **Docket No. 11-78-0186** **Parcel No. 7544 33 126 002**

On January 30, 2012, the above captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant, River Park Apartments LLC, (River Park) was represented by Deborah A. Davis of Strategic Tax Services, Inc., Chicago, Illinois. The Pottawattamie County Board of Review was represented by Assistant County Attorney Leanne A. Gifford. The Appeal Board having reviewed the record, heard the testimony, and being fully advised, finds:

Findings of Fact

River Park is the owner of a commercially classified apartment building located at 103 S 38th Street, Council Bluffs, Iowa. The complex was built in 2007 and is comprised of eleven buildings with 190 total units. It is situated on a 10.91 acre site. All of the buildings were built with similar quality materials and all are rated as normal condition. The buildings, with the exception of the bathhouse, feature balconies, covered patios, and/or breezeways. The complex includes an 800 square-foot swimming pool. It has 113,000[1] square feet of paving (mix of concrete and asphalt). Additionally, there are eleven garage buildings with a total of eighty-two stalls. The apartment buildings include

[1] The property record card indicates 113,000 square-feet of paved parking, one of the appraisals in the record indicates approximately 260,000 square-feet of paved parking, and the second appraisal in the record indicates "adequate surface parking." One appraisal indicates 244 surface parking spaces, while the second appraisal estimated 222 surface parking spaces.

sixty attached garage stalls. The following chart is a breakdown of the size of the buildings and their units.

	Gross SF/Bldg[2]	Total SF	Units/Bldg	Total Units
Buildings 1-5	13,960	69,800	16	80
Building 6	19,953	19,953	16	16
Building 7	21,506	21,506	22	22
Buildings 8 & 9	22,980	45,960	22	44
Building 10	5,034	5,034	6	6
Building 11	18,880	18,880	22	22
Bathhouse	408	408		
	Totals	181,541		190

River Park protested to the Pottawattamie County Board of Review regarding the 2011 assessment of $12,000,000, which was allocated as follows: $875,000 in land value and $11,125,000 in improvement value. River Park's claim was based on two grounds: 1) the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a); and 2) the subject property is assessed for more than the value authorized by law under section 441.37(1)(b). It asserted the correct value was $10,962,000, allocated as $875,000 to the land and $10,087,000 to the improvements.

The Board of Review denied the protest.

River Park then appealed to this Board reasserting its claims. Although River Park asserted a claim of equity, its evidence and testimony at hearing was entirely regarding its claim of over-assessment.

Both River Park and the Board of Review submitted appraisals in support of their positions.

River Park submitted an appraisal competed by David Mark Nelson, an appraisal consultant with Roy R. Fisher, Inc., Davenport, Iowa. Nelson's appraisal of the subject property had an effective date of January 1, 2011. Nelson also testified for River Park at hearing. Nelson concluded a total

[2] Gross building area includes all common areas, garage and storage areas. It does not include balconies, patios or breezeways.

value of $11.700.000, including $600,000 for personal property. Nelson's total value opinion of the real property is $11.100.000.

Nelson developed the sales comparison and income approaches to value. He did not develop the cost approach to value.

The sales comparison approach considered eight properties: six were located in Iowa in Council Bluffs, Cedar Rapids, Coralville, and West Des Moines, and two were located in Omaha, Nebraska. The properties sold between December 2009 and November 2010. The unadjusted sale prices ranged from $4,500,000 to $18,655,000, with an unadjusted price per unit ranging from $41,006 to $70,841. The average unadjusted price per unit was roughly $59.000.

After making adjustments to the sales for various elements, the adjusted price per unit ranged from $53,700 to $63.200, with an average of roughly $57.455. which Nelson rounded to $57,500. Nelson reconciled the data, stating in his report "only two of the sales indicated adjusted values above $60,000 per unit, with only one sale below $55,000. This provides strong support for a value between $55,000 and $60,000." At hearing, Nelson noted the sales with the lowest net adjustments were at the upper end of the indicated price-per-unit range, but the more proximate sales were at the lower end of the range. Nelson indicated he considered both the net adjustments and proximity in his reconciliation.

190 units X $57.500 per-unit value = $10.925.000 indicated value

Nelson developed the income approach to value by two methods: the gross income multiplier method (GIM) and the direct capitalization (direct cap) method.

The GIM is a relatively easy method of analysis. A GIM is obtained by dividing the sale price of a property by the annual effective gross income at the time of sale. Nelson developed a GIM from all of the sales he considered in the sales comparison approach, resulting in a GIM range of 5.31 to 8.31. Nelson selected three sales which he believed to have the most similar expense ratios to the subject. Looking at these three sales, the GIM range tightened from 5.25 to 5.6. Considering this range, and also giving most consideration to his Sales 6 and 8, Nelson ultimately selected a GIM of 5.75.

GIM 5.75 X $2,049,037 gross income = $11,781,963 indicated value

Nelson also developed the direct cap method. In short, Nelson determined a loaded capitalization rate of 12.25%. He determined projected net income of $1,406,585.

Projected net income $1,406,585 / 0.12246 cap rate = $11,486,077 indicated value.

However, Nelson believes this value is understated because the personal property has not yet been deducted. As a check to his calculations, Nelson assumes a value conclusion of $11,700,000. He then removes personal property, as well as reserves and taxes to conclude a net income of $907,523. He divides this by his overall capitalization rate (OAR) of 7.75%. This results in the following calculation:

Net Income $907,523 / 0.0775 OAR = $11,709,975

Nelson considers this analysis as support for his final value estimate and concludes his income approach to $11,700,000. Nelson's final conclusions are as follows:

Sales Comparison	$10,900,000
Income Approach	
GIM	$11,780,000
Direct Capitalization	$11,700,000

Nelson gave most consideration to the income approach, stating in his report that it "is the most important approach in valuing income producing property." He ultimately determined a total market value of $11,700,000, which includes land, improvements, and personal property. Excluding personal property, which he opined as $600,000, his conclusion of the real property value only, as of January 1, 2011, was $11,100,000.

Based on his written report and his testimony, we find Nelson to be a credible and knowledgeable witness.

Dane Anderson a general certified real property appraiser with CBRE, Inc., West Des Moines, Iowa, completed an appraisal for the Board of Review with an effective date of January 1, 2011. Anderson also testified for the Board of Review regarding his appraisal. Anderson concluded a total value of $12,500,000, including $200,000 for personal property. His total value opinion of the real property is $12,300,000.

Anderson developed all three approaches to value.

In the cost approach, Anderson relied on the Marshall Valuation Service (MVS), published by Marshall and Swift, LLC. His replacement cost new, including entrepreneurial profit, was $16,868,600. After depreciation, and considering depreciated personal property and land value, his rounded cost approach value is $12,960,000. We note Anderson considered four land sales and concluded a land value of $1,240,000 compared to the assessed site value of $875,000.

Anderson developed the sales comparison approach to value and considered five improved apartment sales. Three sales were located in Omaha, Nebraska; one in West Des Moines, Iowa; and one in Cedar Rapids, Iowa. With the exception of one property in Omaha, Anderson considered the same properties used by Nelson.

After adjustments for differences, Anderson concluded an indicated value per unit ranging from $57,429 to $69,424. From this, he reconciled a value of $66,000 per unit, or a total value of $12,540,000.

Lastly, Anderson developed the income approach to value. He considered six comparable apartments to estimate the market rents, considered the operating history of the subject property, and ultimately determined an effective gross income of $2,060,270. After expenses his net operating income was $1,464,409. He considered a loaded capitalization rate of $11.75%, which resulted in a value indicated by the income approach of $12,460,000, rounded.

Anderson's conclusions are as follows.

Cost Approach	$12,960,000
Sales Comparison	$12,540,000
Income Approach	$12,460,000

Anderson gives all three approaches consideration in his final value opinion, with primary emphasis given to the income approach. His final conclusion of value is $12,500,000, which includes $200,000 in personal property. His opinion of the real property is $12,300,000.

Based on his written report and his testimony, we find Nelson to be a credible and knowledgeable witness.

While we find both appraisers to be credible, we note essentially two areas of dispute between their conclusions, specifically noted in the income approach to value. The difference can be largely attributed to the rental expense category. The following chart is a comparison between the two appraisers' figures and the owners actual 2010. The larger discrepancies highlighted.

	Anderson	Owner Actual 2010	Nelson
Vacancy/Loss/Credit	5%	8.50%	9.33%
Effective Gross Income	$2,060,070	$1,992,571	$2,049,037
Management	4%	5%	5%
Advertising Expense	$57,000	$94,320	$110,000[3]
Reserves	$250/Unit or $47,500		$250/Unit or $47,500
Total Expenses	$595,861	$586,546	$642,452
Net Operating Income	$1,464,000	$1,406,024	$1,406,000

Starting with the vacancy/loss/credit expense, there is a difference of 4.33% between the two appraisers. We find this difference is based on Nelson including a "loss to lease" of 3%. At hearing, Anderson testified he did not believe a loss to lease was applicable in this instance because loss of lease is based on contract versus market rent. And the subject property was receiving market rents.

[3] Exhibit 2 which references this income-expense comparison chart indicates $115,505 for Nelsons rental expenses. However, on the opposing page of 11-B in his report, we note $115,505 is reported as the average for this category and his projection is $110,000.

Therefore, loss of lease is not applicable in this instance. We agree. Furthermore, we note Nelson testified that he "found the subject rents to reflect market rents." Therefore, we give more reliance to Anderson's estimate of vacancy/loss/credit.

If Nelson's loss to lease adjustment is removed, his vacancy/credit consideration is roughly $130,000, compared to Anderson's vacancy/credit consideration of roughly $100,000. For a $12,000,000 property we do not consider this to be a significant difference.

The "advertising expense" column on exhibit 2 and replicated in the above chart is slightly misleading. Exhibit 2 indicates Anderson estimated $57,000 for advertising expense that he considers to typically include "all costs associated with the promotion of the subject including advertisements in local publications, trade publications, yellow pages" and so forth. Exhibit 2 indicates Nelson's estimate for advertising expense is $110,000; however, his report includes advertising in a larger "rental expense" category, which also includes managers salary, leasing agent salary, finders fee/credit reports/furniture, rental incentive, and bonus. He does not break out his own opinion of the independent advertising expense. Rather than breaking out and attempting to analyze the individual expense, we choose to look at the total operating expense estimated by each appraiser. Anderson estimated operating expenses at $595,861, whereas Nelson estimated operating expenses at $642,452. Both estimates included reserves for replacements but did not include real estate taxes. In the entirety of the expense analyses, there are numerous minor discrepancies that contribute to this roughly $45,000 difference.

When presented with more than one appraisal, it is typical for this Board to find one more reliable than another. However, in this instance, despite some differences already noted, we find both appraisers values overall are reasonable and supported. As such, we give both appraisals equal consideration. This results in a total indicated value of the subject property, including personal property of $12,100,000.

Another significant point of dispute in this appeal is the personal property estimate of \$600,000. Nelson considered an appliance replacement cost of \$2500 per unit for kitchen equipment for 190 units resulting in cost of \$475,000. He also considered a cost of \$1500 per unit for laundry equipment, totaling \$285,000. Lastly, he added \$15,000 for the personal property in the pool and court equipment. His total cost for personal property was \$775,000 before depreciation. He estimated the appliances to be depreciated between 20-25%, or between \$155,000 to roughly \$194,000. He essentially takes the mid-range of this depreciation estimate to conclude a depreciated value of the personal property of \$600,000. This breaks down to roughly \$3150 per unit. We consider this to be at the upper end of the range for an apartment complex of this size.

Anderson estimated \$247,000 for the personal property, or roughly \$1300 per unit before depreciation. After depreciation, he estimated a cost per unit of \$1053. His report does not directly specify whether he considered the pool or clubhouse equipment, although his testimony indicated it was included. During his testimony Anderson indicated he considered personal property to be equipment that would normally be removed such as a refrigerator or washer and dryer. He does not consider personal property things that an owner would typically not remove due to being built in such as an oven, built-in microwave, or dishwasher. Essentially, he categorizes these items the same as he would a furnace or central air, as fixtures. Therefore he doesn't consider it personal property. He is considering the refrigerator, washer/dryer, and all miscellaneous equipment such items needed for the pool deck. Additionally, he states the manager told him that the cost of replacement for personal property was \$1220 per unit, which he took into consideration within his analysis. When questioned if he felt this estimate was low, he indicated he did not believe so given the advantages of buying in bulk. While this explains why his estimates are lower than Nelson's, we believe these estimates would set the lower end of the reasonable range. Therefore, we consider the mid-range, or \$400,000, of Nelson and Anderson's personal property estimates to be the most reasonable.

Because both appraisals are credible and because we find the personal property estimates to represent the high and low end of reasonable, we find the total value for the real property of the subject to be $11,700,000.

Based on the foregoing, we find sufficient evidence has been provided to demonstrate the subject property is over-assessed.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Both parties provided a complete appraisal of the subject property. Although there are some discrepancies between the two reports, ultimately we find them both to be credible and reliable and give them equal consideration.

We find the preponderance of the evidence supports River Park's claims of over-assessment.

THE APPEAL BOARD ORDERS the assessment of River Park, LLC's property located at 103 S 38th Street, Council Bluffs, Iowa, be modified to a total value of $11,700,000, as of January 1, 2011.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Pottawattamie County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 17 day of April, 2012.

Karen Oberman

Karen Oberman, Presiding Officer

Richard Stradley, Board Chair

Jacqueline Rypma

Jacqueline Rypma, Board Member

Cc:

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Certificate of Service
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on 4-17, 2012
By: ✓ U.S. Mail __ FAX
__ Hand Delivered __ Overnight Courier
__ Certified Mail __ Other
Signature